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E.O. 12958: DECL: 08/19/2019
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SUBJECT: SUPREME COURT DECLINES TO RULE ON
CONSTITUTIONALITY OF MILITARY JURISDICTION

REF: MX 1544

Classified By: Confidential by Political Minister Counselor Charles Barclay.
Reason: 1.4 (b),(d).

¶1. (SBU) On Monday August 10, Mexico's Supreme Court ruled 6-5 that Mexico's amparo law (which outlines the instances in which citizens can challenge government actions and prior court rulings) does not allow the wife of a victim shot at a military checkpoint the right to contest military jurisdiction. The ruling sidesteps the constitutional questions over military jurisdiction, but for now, allows military courts to continue trying charges of human rights abuses against soldiers.

¶2. (SBU) In May 2009, a consortium of NGOs acting on behalf of the wife of a victim of a 2008 military checkpoint shooting in Santiago de los Caballeros, Sinaloa (reftel), filed an amparo (a constitutional challenge of an act by an authority) contesting the transfer of investigative authority by civilian prosecutors to military jurisdiction. The NGOs argued that under Mexico's constitution, military courts are not competent to adjudicate human rights violations against civilians. The organizations argued that Mexican law is contradictory and that the military's assertion of jurisdiction in crimes against civilians involving its soldiers runs counter to international standards.

¶3. (C) Setting aside the broader constitutional question, justices ruled that the circumstances of the case did not fall within the guidelines allowed by Mexico's amparo laws, which spell out the instances in which individuals can seek injunctive remedy. Justices further ruled that the wife of the victim of the shooting had no standing and that only the accused soldiers have the right to contest the manner in which they are tried. A representative from CentroPro, the lead organization arguing the case before the court, told Poloff her organization is disappointed in the Court's decision, saying that it closes the possibility that victims can mount further challenges to current practices. This ruling, she said, removes one of the most effective tools available in Mexican jurisprudence for challenging military jurisdiction over human rights related crimes by soldiers.

¶4. (C) Comment: Mexico's government and military insist that crimes committed by servicemembers in the performance of their duties remain within the institution's legal jurisdiction. They argue that transferring cases to civilian jurisdiction would not improve accountability and would

undermine the morale and effectiveness of the military.
(Note: The U.S. military enforces a similar self policing jurisdictional prerogative under the Uniform Code of Military Justice (UCMJ). End Note.) The human rights community will continue to challenge this position in coming months. Miguel Carbonell, a legal expert and journalist from UNAM's Institute for Judicial Research, suggested that victims and advocates could still bring cases contesting military jurisdiction to lower courts and try to take the question back to the Supreme Court to make a definitive ruling. Carbonell also noted that a legislative track remains open; several bills are currently before Congress to move jurisdiction to civilian courts. The lack of a conclusive decision this week by a divided high court will fuel further debate. End Comment.
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